

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SOLOMON ARGUELLES PALOMARES
7518 Beckford Avenue
Reseda, CA 91335

Registered Nurse License No. 437148

Respondent.

Case No. 2012-757

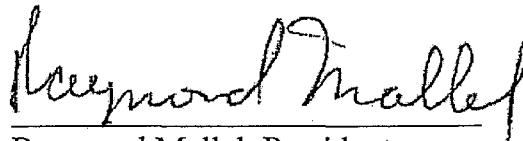
OAH No. 2012090893

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on June 7, 2013.

IT IS SO ORDERED this 9th day of May, 2013.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

SOLOMON ARGUELLES PALOMARES,
Registered Nurse License No. 437148,

Respondent.

Case No. 2012-727

OAH No. 2012090893

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on February 8, 2013, in Los Angeles. Complainant was represented by Geoffrey Ward, Deputy Attorney General. Respondent Solomon Arguelles Palomares was present and represented by Carlo A. Spiga, Attorney at Law.

At the conclusion of the hearing, complainant's counsel was asked to file the most recent disciplinary guidelines of the Board of Registered Nursing. On February 13, 2013, complainant filed a letter, stating that the Recommended Guidelines for Disciplinary Orders and Conditions of Probation, which were revised in October 2002, are current and effective. The letter and attached guidelines were marked as Exhibit 10.

Oral and documentary evidence having been received, the Administrative Law Judge submitted this matter for decision on February 13, 2013, and makes the following findings:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on June 6, 2012, the Accusation, Case No. 2012-727, was made and filed by Louise R. Bailey, M.Ed., R.N., in her official capacity as the Interim Executive Director of the Board of Registered Nursing, Department of Consumer Affairs, State of California (Board).

2. On or about March 31, 1989, the Board issued registered nurse license no. 437148 and licensing rights to Solomon Arguelles Palomares (respondent). At all times relevant herein, said nursing license has been in full force and effect and will expire on June 30, 2014, unless renewed.

3. In January 1988, respondent completed his nursing education at the school of nursing at Pierce College in Woodland Hills. In the past few years, he has worked for a nurse's registry and at a nursing home. Respondent has been licensed as a registered nurse in California for almost 24 years and does not have any disciplinary history on his license.

Convictions

4. (A) On or about June 5, 2000, before the Superior Court of California, County of Los Angeles, in *People v. Solomon Arguelles Palomares*, Case No. 0CR25034, respondent was convicted on his plea of nolo contendere of inflicting corporal injury on a spouse in violation of Penal Code, section 273.5, subdivision (a), a misdemeanor and crime involving moral turpitude.

(B) Based on his plea, the court suspended the imposition of sentence and placed respondent on summary probation for three years on condition, in part, that he serve 45 days in the Los Angeles County Jail or perform 30 days of work with Cal Trans with credit for two days or a total of 28 days, pay \$200 to the domestic violence fund and a \$100 restitution fine, obey all laws and orders of the court, complete a 12-month domestic violence or batterers counseling program, not own or possess any dangerous weapon, and not annoy, harass, or threaten anyone involved in the case.

(C) On or about September 20, 2000, the court issued a Protective Order, directing respondent, in part, not to harass, threaten, or disturb his wife, Ramona Palacios (Palacios), not to have contact with her, and stay away from and not come within 100 feet of her. Respondent was served with the Protective Order.

5. The facts and circumstances of respondent's 2000 conviction for domestic violence are that, on or about January 28, 2000, respondent was married to and living with Palacios in Los Angeles County. On said date, respondent was jealous of his wife's activities and became embroiled in an argument with her. During this domestic argument, respondent threw pens, a pillow, and clock at Palacios. The pens struck Palacios, causing her to be frightened and inflicting a corporal injury upon her. She called the police and respondent was arrested. The next day, Palacios moved out from the home that she shared with respondent.

6. Respondent's conviction for inflicting corporal injury on a spouse is substantially related to the qualifications, functions, or duties of a registered nurse within the meaning of California Code of Regulations, title 16, section 1444, subdivision (a). The conviction involved assaultive or abusive conduct, which is not consistent with expected behavior and functions of a registered nurse.

7. (A) Following his domestic violence conviction, on March 6, 2001, respondent filed proof with the court that he completed the 28 days of Cal Trans work.

(B) On May 22, 2001, respondent paid the \$300 for the domestic violence and restitution fines as ordered by the court.

(C) On August 21, 2001, respondent filed proof with the court that he completed the 52-week or 12-month program in domestic violence counseling. Respondent successfully completed the three-year summary probation for his domestic violence conviction.

8. Respondent admits his conviction and his offense of domestic violence that he committed against his wife. He regrets having hit her with an object or objects and has not repeated his conduct in the 12 or 13 years since committing his offense.

9. (A) On or about April 25, 2002, before the Superior Court of California, County of Los Angeles, in *People v. Solomon Arguelles Palomares*, Case No. 2SB02228, GA084201, respondent was convicted on his plea of guilty of disobeying a domestic relations court order in violation of Penal Code, section 273.6, subdivision (a), a misdemeanor and crime not involving moral turpitude.

(B) Based on his plea, the court suspended the imposition of sentence and placed respondent on summary probation for three years on condition, in part, that he pay a fine, state penalty fund assessment, installment and accounts receivable fees, and restitution fine totaling \$945. In lieu of the fine, respondent was given the option of serving 10 days in the Los Angeles County Jail. In lieu of paying the fine or serving time in jail, he was given the option of performing 140 hours of community service. In addition, the court ordered respondent to stay away from the residence and place of employment of his wife Palacios, obey all laws and orders of the court, and not violate the protective order issued in favor of Palacios. Respondent filed a letter from the Department of Mental Health with the court but the contents of the letter were not established in this matter.

10. The facts and circumstances of respondent's conviction are that, on or about March 13, 2002, respondent went to his wife Palacios' place of employment in Gardena. Respondent and Palacios were still married but they had been separated for an undetermined length of time. Earlier that year, respondent had filed a petition to dissolve the marriage but he still loved her and wanted to reconcile with her. He went

to Palacios' job knowing that there was a domestic relations protective issued by the court that barred him from contacting her. The preceding day, respondent called Palacios' job several times and asked to speak to her. He told the receptionist that he was coming to the job site the next day if he could not talk to her on the telephone. On March 13, 2002, respondent parked outside of Palacios' job site and waited for a couple of hours. He then walked up to the building and knocked on a window. Palacios saw respondent standing outside at the window and became frightened. The police were summoned. Palacios informed the police that respondent suffered from manic depression. Respondent was arrested for violating the protective order.

11. Respondent's conviction for disobeying a domestic relations court order is substantially related to the qualifications, functions, or duties of a registered nurse within the meaning of California Code of Regulations, title 16, section 1444. The conviction involved a disregard or failure to follow the law and thus showed the present or potential unfitness to practice in a manner consistent with the public health, safety, or welfare. A Board licensee is expected to follow the law and regulations governing the practice of nursing.

12. (A) Following his conviction for disobeying the court order, on April 25, 2002, respondent paid in full the \$945 in fines and assessments.

(B) On April 25, 2005, respondent successfully completed the three-year summary probation for his conviction for disobeying the domestic relations court order, and the court terminated the proceedings.

(C) On June 14, 2010, the court granted respondent's petition for expungement of his conviction for disobeying the court order under Penal Code section 1203.4. The court ordered that his guilty plea be set aside and vacated, a not guilty plea entered, and the criminal complaint and charge dismissed. Respondent had earlier obtained a waiver of the costs for filing his petition.

13. At the hearing in this matter and in his personal statement (Exh. A), respondent expressed regret for going to Palacios' place of employment in an attempt to talk her into staying married to him. He acknowledged that he made a "wrong decision" and violated the court order. After his arrest, respondent began to finally realize that Palacios did not want to talk to him again. With the help of his friends and family and the passage of time, respondent accepted that Palacios did not love him any more and their marriage was over. With respect to his conviction for violating the court order, respondent learned the importance of following the law and the orders of the court. In 2003, respondent's marriage to Palacios was dissolved.

14. (A) On or about October 26, 2005, before the Superior Court of California, County of Los Angeles, in *People v. Solomon Arguelles Palomares*, Case No. SHL02813, respondent was convicted on his plea of nolo contendere of disorderly conduct by solicitation of prostitution in violation of Penal Code, section 647, subdivision (b), a misdemeanor and crime not involving moral turpitude.

(B) Based on his plea, the court suspended the imposition of sentence and placed respondent on summary probation for two years on condition, in part, that he pay a fine, penalty assessment, fees, and restitution fine totaling \$1,518 or perform 15 days of community service in lieu of paying the fine, not engage in sexual activity for money, submit to a test for AIDS, enroll in an AIDS education class, and obey all laws and orders of the court. Respondent elected to perform the community service instead of paying the fine and was given one day credit towards community service.

15. The facts and circumstances of respondent's conviction are that, on or about September 30, 2005, respondent was driving in the area of Sunset Boulevard and Alexandria Avenue in Los Angeles at 11:15 p.m. He stopped his car at the curb and solicited an undercover police officer for an act of prostitution in exchange for \$40. The police officer was a member of the Los Angeles Police Department vice division and participating in a "prostitution enforcement task force" to curb the solicitation activities of male customers.

16. Respondent's conviction for solicitation of prostitution is substantially related to the qualifications, functions, or duties of a registered nurse within the meaning of California Code of Regulations, title 16, section 1444. The conviction involved soliciting a stranger for a sexual act for money and thus showed a disregard of the public health. The conviction demonstrated a present or potential unfitness to practice in a manner consistent with the public health, safety, or welfare.

17. (A) Following his conviction for disorderly conduct, on November 18, 2005, respondent filed certificates with the court that showed he had completed the AIDS test and the AIDS education class.

(B) On February 16, 2006, respondent filed proof with the court that he had performed 15 days of community service in lieu of paying the fine and fees. In addition, respondent paid another \$120 in fines or fees. On or about October 26, 2007, respondent successfully completed the two-year summary probation for his disorderly conduct conviction.

(C) On June 2, 2010, the Superior Court granted respondent's petition under Penal Code section 1203.4 and ordered that his plea be set aside and vacated, a plea of not guilty entered, and the criminal complaint dismissed.

18. Respondent is embarrassed by his conviction for solicitation of prostitution. He explained that he was lonely following the break-up of his marriage to Palacios and made a poor choice to trying to fill the void in his life.

Failure to Furnish Fingerprints

19. (A) It was not established, that on or before June 30, 2010, respondent failed to furnish to the Department of Justice, as directed by the Board, a full set of his fingerprints for the purpose of conducting a criminal history record check and criminal offender information search through the Department of Justice when he filed his 2010 license renewal application.

(B) It was not established by any evidence that the Board directed respondent to submit his fingerprints to the Department of Justice when he applied for renewal of his nursing license on or before June 30, 2010. Complainant did not present any evidence, such as the license renewal application or a letter or information bulletin, that directed or instructed respondent to submit his fingerprints with his license renewal application pursuant to the new regulatory requirement under California Code of Regulations, title 16, section 1419, which was made effective on or after March 1, 2009. Respondent's license renewal application that he filed with the Board in 2010 was not presented as evidence in this matter. As such, it was not established that the Board directed respondent to furnish his fingerprints by the expiration date of his nursing license.

20. In the hearing in this matter, respondent admitted that he did not submit his fingerprints when he filed his license renewal application on or before June 30, 2010. However, no testimony was elicited that respondent knew or was aware that he was required to submit his fingerprints with the license renewal application or that he was directed by language contained in the license renewal application to submit his fingerprints with his application. Moreover, after filing his license renewal application on or before June 30, 2010, the Board renewed his nursing license even though he did not submit his fingerprints with his license renewal application.

21. (A) Several months later, on November 9, 2010, the Probation Program Manager of the Board sent a letter to respondent, indicating, in part, that the Board's records showed that he had not submitted required fingerprints. In the letter, the Probation Program Manager asked respondent to submit his fingerprints to the Board within 30 days of receipt of the letter and enclosed a Request for Live Scan Service form.

(B) Respondent admitted he was late in furnishing his fingerprints and submitted them to the Board on an undetermined date in 2012. However, the Accusation does not allege that respondent violated California Code of Regulations, title 16, section 1419, by submitting his fingerprints in an untimely manner in response to the Board's letter dated November 9, 2010.

22. It was not established that respondent's failure to submit his fingerprints for purposes of a criminal history record check caused a delay in the Board's discovery of his criminal convictions. No evidence was presented on this allegation. No evidence was presented as to when the Board purportedly discovered respondent's criminal convictions or whether respondent's purported failure to submit fingerprints with his license renewal application caused any such delay.

Other Evidence

23. (A) From January 7, 1998, until the present, respondent has received psychiatric and medication therapy for depression at the San Fernando Mental Health Center of the Los Angeles County Department of Mental Health. He has been seen by Drs. T. Tripodis and Vanessa Parker at the mental health center.

(B) In a letter dated January 31, 2013, Dr. Tripodis, a psychiatrist at the San Fernando Mental Health Center, stated that respondent has been attending his appointments on a regular basis and is in compliance with his treatment regimen. Respondent has participated in individual and group therapy sessions. He has attended group sessions in the Wellness Recovery Action Plan and Relaxation Skills. Dr. Tripodis has opined that respondent is making progress toward achieving his treatment goals.

(C) Presently, respondent is taking three medications as prescribed by his physicians: Depakote for depression, Zyprexa for anxiety, and Ativan as a sleep aid.

24. (A) In 2010 and 2011, respondent's depression worsened while he was living in El Cerrito in Contra Costa County with his third wife Marites. He was having marital difficulties with her and seeing his doctors at the San Fernando Mental Health Center only once every three months. In early 2011, respondent moved back to Southern California and, shortly thereafter, divorced his third wife.

(B) In 2011, respondent completed an anger management program at the San Fernando Mental Health Center. Over the course of approximately one year, he attended more than 20 sessions of the anger management program. He started the program voluntarily because he thought he could benefit from the program.

(C) In November 2011, respondent was placed on temporary total disability by Dr. Parker of the San Fernando Mental Health Center due to depression. His depression had worsened because of the divorce from his third wife and his inability to find a job or work as a nurse. He was on total temporary total disability until September 2012.

(D) Respondent asserted that his depression is under control with therapy and medication and he is able to perform the duties and functions of a registered nurse.

25. Respondent is 50 years old and thrice divorced. He lives with his mother in Reseda. His first wife lives in the same city with their 23-year-old daughter. He does not see his first wife but is close to his daughter, who recently graduated from college and is working as an engineer. Respondent sees his daughter one or two times each week.

26. Over the past several years, respondent has worked as a treatment nurse in nursing homes or long-term care facilities and for nurse registries. When he has worked for nurse registries, he has been assigned to a number of hospitals, including Western Medical Center in Anaheim, Northridge Hospital, and St. Mary Medical Center in Long Beach. Respondent typically worked night shifts two or three times weekly on a per diem basis and was frequently assigned to provide nursing care to patients in cardiac, pre and post-operative, and telemetry units. Respondent indicated that he has not had any complaints about his performance as a registered nurse.

27. Respondent is not on probation for any offense or conviction. His last conviction occurred over seven years in October 2005. He testified in a credible manner although with a flat affect and signs of depression.

28. (A) Leilani Anand is a licensed vocational nurse who wrote a letter of recommendation for respondent. She has known respondent for more than 20 years and considers him to be a friend and akin to an older brother. Respondent helped her with her nursing classes and clinical work and showed her how to provide care to patients who are elderly and need treatment for wounds. Anand described respondent as a detail-oriented, friendly, and non-violent person.

(B) Leo V. Nevada submitted a letter of recommendation. He has been friends with respondent for 10 years and has attended family gatherings, weddings, and parties with him. Nevada has found respondent to be cheerful, pleasant, calm, soft spoken, and hard working. Respondent has never displayed any violent behavior in his presence.

29. As set forth in the Certification of Prosecution Costs (Exh. 3), the Board has incurred costs of prosecution in this matter totaling \$2,520.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds do not exist to revoke or suspend respondent's registered nurse license for unprofessional conduct pursuant to Business and Professions Code section 2761, subdivision (a), in that it was not established that respondent failed to furnish a full set of his fingerprints to the Department of Justice, as directed by the Board, when he filed his application for renewal of his license in 2010 in violation of California Code of Regulations, title 16, section 1491, subdivision (b), based on Findings 19 – 22.

2. California Code of Regulations, title 16 (Regulations), section 1419, subdivision (a), provides, in pertinent part, that a renewal application shall be on a form provided by the Board accompanied by the specified fee and required information.

Regulations section 1419, subdivision (b), provides, in pertinent part, that for a license that expires on or after March 1, 2009, as a condition of renewal, an applicant for renewal not previously fingerprinted by the Board, or for whom a record of the submission of fingerprints no longer exists, is required to furnish to the Department of Justice, as directed by the Board, a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice. Failure to submit a full set of fingerprints to the Department of Justice on or before the date required for renewal of a license is grounds for discipline by the Board. It shall be certified on the renewal form whether the fingerprints have been submitted.

Regulations section 1419, subdivision (c), provides, in pertinent part, that, as a condition of renewal, an applicant for renewal shall disclose on the renewal form whether, since he last renewed his license, he has been convicted of any violation of law in this or any other state.

Regulations section 1419, subdivision (e), provides that the failure to provide all of the information required by this section renders any application for renewal incomplete and not eligible for renewal.

3. Regulations section 1419 required not only that the Board prepare an application form for renewal of a nursing license but also direct an applicant for renewal to furnish his fingerprints to the Department of Justice. The application form

was to contain a certification whether the applicant submitted his fingerprints and the query whether the applicant had been convicted of any violation of law since the last renewal of his license. Inasmuch as the license renewal application was not presented as evidence in this matter, there was no evidence that the Board directed respondent to furnish or submit his fingerprints with his renewal application. Parenthetically, there was no evidence that respondent actually failed to disclose his convictions on his renewal application. In addition, there was no evidence that the Board took disciplinary action for any alleged failure to submit fingerprints on or before the date required for renewal of the license. In fact, the Board renewed respondent's license after he submitted his renewal application in 2010. As such, the evidence was not clear and convincing to a reasonable certainty so as to demonstrate that the Board directed respondent to submit his fingerprints along with his renewal application in 2010 or that respondent violated the regulation.

4. Grounds exist to revoke or suspend respondent's registered nurse license for unprofessional conduct pursuant to Business and Professions Code section 2761, subdivision (a), in that respondent has been convicted of offenses substantially related to the qualifications, functions, and duties of a registered nurse, as set forth in Findings 4 – 6, 9 – 11, and 14 – 16.

5. Grounds exist to direct respondent to pay the reasonable costs of investigation and enforcement pursuant to Business and Professions Code section 125.3, in that respondent committed violations of the Nursing Practice Act, as set forth in Conclusions of Law 4 above. Inasmuch as complainant did not establish a cause for discipline as set forth in Conclusions of Law 1 – 3 above, the reasonable costs of investigation and enforcement are deemed to be \$1,500.

6. In its Recommended Guidelines for Disciplinary Orders and Conditions of Probation, the Board provides that factors such as the following should be considered in determining whether revocation, suspension, or probation is to be imposed in a given case: nature and severity of the acts, offenses, or crimes under consideration; actual or potential harm to the public; actual or potential harm to any patient; prior disciplinary record; number and/or variety of current violations; mitigation evidence; rehabilitation evidence; in the case of criminal convictions, compliance with conditions of sentence and/or court-ordered probation; overall criminal record; time passed since the acts or offenses occurred; and, if applicable, evidence of expungement proceedings pursuant to Penal Code section 1203.4

7. Discussion—Each of respondent's convictions in this matter was shown to be substantially related to the qualifications, functions, and duties of a registered nurse. The domestic violence conviction in June 2000 involved assaultive behavior, the April 2002 conviction for disobeying the court order showed a failure to follow the law, and the October 2005 solicitation conviction demonstrated a disregard for the public health and safety. As a matter of rehabilitation, respondent's convictions are not recent and he has not suffered a conviction in over seven years.

He completed probation for each of his convictions and has had the convictions for disobeying the court order and solicitation expunged by the court in 2010. He has not been subject to probationary supervision by the criminal justice system since October 2008 when he completed probation for his last conviction which was for solicitation of prostitution. Aside from his domestic violence offense that occurred 12 years ago in January 2000, respondent has not committed any violent acts. He did not harm any patients and has no prior disciplinary record. As such, respondent's history of compliance with probation suggests that his domestic violence offense was an isolated episode from which respondent learned a difficult lesson, especially after his second conviction for disobeying the protective order.

On the other hand, a common thread woven within respondent's offenses was his mental state. He has been treated for depression since 1998. He was suffering from depression when he committed his offense of domestic violence. In 2002, when he went to his wife's place of employment in violation of a protective order, his wife told the police that he was suffering from manic depression. In September 2005, when he committed his offense of disorderly conduct, respondent admitted that he felt lonely. Respondent has continued to work as a nurse, and, while he has not had any complaints about his performance of his nursing duties, respondent's depression has, in fact, affected his ability to work as a nurse. In 2010, respondent experienced a worsening of his depression after his third divorce and because he had difficulty in finding nursing employment. He was then placed by his doctor on disability for several months from November 2011 through September 2012 and was unable to work as a nurse.

Respondent has been receiving psychiatric treatment and medication therapy for his depression at the San Fernando Mental Health Center since 1998, but the evidence did not demonstrate that he has progressed or stabilized in his treatment such that he can be considered emotionally fit to practice nursing safely. For example, there was a recent two-year period in 2010 and 2011 when he lived in Contra Costa County and received therapy only once every three months. His depression worsened. After returning to Southern California, he became more depressed because of another divorce and his inability to find a job. His doctor then placed him on temporary total disability from November 2011 through September 2012. Respondent submitted a letter from his psychiatrist who has stated that respondent has been attending his appointments, complied with his treatment regimen, and progressed towards his treatment goals. However, respondent did not present a report or records from a treating psychiatrist delineating a diagnosis, specific goals in therapy, success of medication therapy, or prognosis.

Thus, though respondent has completed probation for his convictions, had two convictions expunged, and has not been convicted or committed a crime in several years, the absence of any reports or documents regarding his treatment for depression, which is at the root of his misconduct and continues to affect him, has a tendency in reason to demonstrate that respondent is not fully rehabilitated from his

convictions. Accordingly, based on his convictions, respondent will be placed on probation. Because his depression was a factor in his offenses and has affected his ability to work as a nurse, public health and safety require that one of the conditions of probation should be a mental health evaluation to confirm that respondent is capable and fit to practice as a registered nurse in a safe manner.

* * * * *

Wherefore, the following Order is hereby made:

ORDER

Registered nurse license no. 437148 and licensing rights issued by the Board of Registered Nursing to respondent Solomon Arguelles Palomares shall be revoked, based on Conclusions of Law 4, 6, and 7, jointly and for all; provided, however, said order of revocation will be stayed and respondent shall be placed on probation for three (3) years on the following terms and conditions:

1. Obey All Laws - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.
2. Comply With the Board's Probation Program - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension. Upon successful completion of probation, respondent's license shall be fully restored.
3. Report in Person - Respondent, during the period of probation, shall appear in person at interviews and/or meetings as directed by the Board or its designated representatives.
4. Residency, Practice, or Licensure Outside of State - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and

when he resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing license during the term of probation.

5. Submit Written Reports – Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

6. Function as a Registered Nurse -- Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. Employment Approval and Reporting Requirements – Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this Decision to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. Supervision – Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- a. **Maximum** - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- b. **Moderate** - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- c. **Minimum** - The individual providing supervision and/or collaboration has person-to-person communication with petitioner at least twice during each shift worked.
- d. **Home Health Care** - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with petitioner as

required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by respondent with or without petitioner being present.

9 Employment Limitations – Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis. Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program. Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. Complete a Comprehensive Nursing Education or Refresher Course – Respondent, at his own expense, shall enroll in and successfully complete a course relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course. Respondent shall submit to the Board the original transcript or certificate of completion for the above required course. The Board shall return the original documents to respondent after photocopying them for its records.

11. Costs Recovery—Respondent shall pay to the Board for the costs associated with its investigation and enforcement under Business and Professions Code section 125.3, in the amount of \$1,500. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three (3) months prior to the end of the probation term.

12. Violation of Probation - If respondent violates the conditions of his probation, the Board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

13. License Surrender - During respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- a. Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- b. One year for a license surrendered for a mental or physical illness.

14. Severability Clause -- Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

15. Mental Health Examination - Respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment

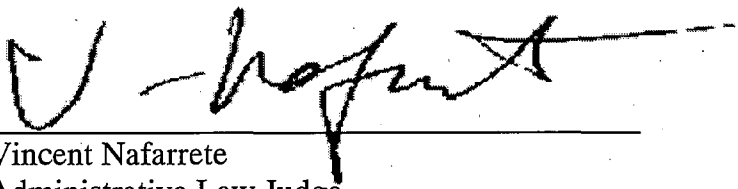
and recommendations to the Board. All costs are the responsibility of respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

16. Therapy or Counseling Program—Respondent, at his own expense, shall participate in an on-going therapy or counseling program until such time as the Board releases him from the requirement and only upon the recommendation of the therapist or counselor. Written progress reports from the therapist or counselor will be required at various intervals.

Dated: March 12, 2013



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Accusation Case No. 2012-727

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Attorney General of California
2 Karen B. Chappelle
Supervising Deputy Attorney General
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. **2012 - 727**

11 **SOLOMON ARGUELLES PALOMARES**

A C C U S A T I O N

12 **7518 Beckford Avenue**
13 **Reseda CA, 91335**

14 **Registered Nurse License No. 437148**

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., R.N. ("Complainant") brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
21 Department of Consumer Affairs.

22 2. On or about March 31, 1989 the Board issued Registered Nurse License Number
23 437148 to Solomon Arguelles Palomares ("Respondent"). The Registered Nurse License has
24 been active at all times relevant herein and expires on June 30, 2014, unless renewed.

25 **JURISDICTION**

26 3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
27 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
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1 inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of
2 the Nursing Practice Act.

3 4. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
4 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
5 licensee or to render a decision imposing discipline on the license. Under Section 2811
6 subdivision (b) of the Code, the Board may renew an expired license at any time within eight
7 years after the expiration.

8 5. Section 118 subdivision (b) of the Code grants the Board jurisdiction over suspended,
9 expired, forfeited, cancelled, or surrendered licenses:

10 "The suspension, expiration, or forfeiture by operation of law of a license
11 issued by a board in the department, or its suspension, forfeiture, or cancellation by
12 order of the board or by order of a court of law, or its surrender without the written
13 consent of the board, shall not, during any period in which it may be renewed,
14 restored, reissued, or reinstated, deprive the board of its authority to institute or
continue a disciplinary proceeding against the licensee upon any ground provided by
law or to enter an order suspending or revoking the license or otherwise taking
disciplinary action against the licensee on any such ground."

15 STATUTES

16 6. Section 2761 of the Code provides grounds for disciplinary action:

17 "The board may take disciplinary action against a certified or licensed
18 nurse or deny an application for a certificate or license for any of the following:

19 (a) Unprofessional conduct . . .

20 (e) Making or giving any false statement or information in connection
21 with the application for issuance of a certificate or license.

22 (f) Conviction of a felony or of any offense substantially related to the
23 qualifications, functions, and duties of a registered nurse, in which event the record of
24 the conviction shall be conclusive evidence thereof."

25 7. Section 2765 of the Code provides that a conviction following a nolo contendere plea
26 may be the basis for disciplinary action, irrespective of a subsequent withdrawal of that plea
27 under the provisions of Penal Code section 1203.4:

28 "A plea or verdict of guilty or a conviction following a plea of nolo
contendere made to a charge substantially related to the qualifications, functions and
duties of a registered nurse is deemed to be a conviction within the meaning of this
article. The board may order the license or certificate suspended or revoked, or may
decline to issue a license or certificate, when the time for appeal has elapsed, or the
judgment of conviction has been affirmed on appeal or when an order granting

1 probation is made suspending the imposition of sentence, irrespective of a subsequent
2 order under the provisions of Section 1203.4 of the Penal Code allowing such person
to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
the verdict of guilty, or dismissing the accusation, information or indictment.”

3 REGULATORY PROVISIONS

4 8. Section 1419 of Title 16 of the California Code of Regulations governs the renewal of
5 licenses:

6 (a) A renewal application shall be on the form provided by the board,
7 accompanied by the fee specified in Section 1417 (a)(3) and required information and
filed with the board at its office in Sacramento.

8 (b) For a license that expires on or after March 1, 2009, as a condition of
9 renewal, an applicant for renewal not previously fingerprinted by the board, or for
whom a record of the submission of fingerprints no longer exists, is required to
10 furnish to the Department of Justice, as directed by the board, a full set of fingerprints
for the purpose of conducting a criminal history record check and to undergo a state
11 and federal level criminal offender record information search conducted through the
Department of Justice. Failure to submit a full set of fingerprints to the Department of
12 Justice on or before the date required for renewal of a license is grounds for discipline
by the board. It shall be certified on the renewal form whether the fingerprints have
13 been submitted. This requirement is waived if the license is renewed in an inactive
status, or the licensee is actively serving in the military outside the country.

14 (c) As a condition of renewal, an applicant for renewal shall disclose on
the renewal form whether, since he or she last renewed his or her license, he or she
15 has been convicted of any violation of the law in this or any other state, the United
States or its territories, military court, or other country, omitting traffic infractions
16 under \$300 not involving alcohol, dangerous drugs, or a controlled substance.

17 (d) As a condition of renewal, an applicant for renewal shall disclose on
the renewal form whether, since he or she last renewed his or her license, he or she
18 has had a license disciplined by a government agency or other disciplinary body.
Discipline includes, but is not limited to, suspension, revocation, voluntary surrender,
19 probation, reprimand, or any other restriction on a license held.

20 (e) Failure to provide all of the information required by this section
21 renders any application for renewal incomplete and not eligible for renewal.”

22 9. Section 1444 of Title 16 of the California Code of Regulations provides criteria for
23 determining when a criminal conviction is related the profession of registered nursing:

24 “A conviction or act shall be considered to be substantially related to the
qualifications, functions or duties of a registered nurse if to a substantial degree it
25 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
26 shall include but not be limited to the following:

27 (a) Assaultive or abusive conduct including, but not limited to, those
violations listed in subdivision (d) of Penal Code Section 11160.

28 (b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.”

10. Penal Code section 11160 subdivision (d), which is incorporated by reference into section 1444 of Title 16 of the Code of Regulations provides in pertinent part:

“For the purposes of this section, "assaultive or abusive conduct" shall include any of the following offenses:

...

(18) Abuse of spouse or cohabitant, in violation of Section 273.5.”

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Failure to Furnish Fingerprints by Date License Renewal)

12. Respondent is subject to discipline under Section 2761 subdivision (a) of the Code for unprofessional conduct for failing to furnish to the Department of Justice, as directed by the Board, a full set of fingerprints for the purpose of conducting a criminal history record check when he renewed his license in 2010, as required by section 1419 of Title 16 of the California Code of Regulations, as follows.

13. Section 1419's fingerprinting requirements apply to licenses set to expire after March 2009. In 2010, Respondent submitted to the Board his application for renewal of his registered nursing license, which was set to expire in June 2010. But he did not furnish a full set of fingerprints for purpose of conducting a criminal history record check. The Board directed him to do so by the license's expiration date. He did not. He belatedly did so in 2012, more than a year after the date required.

14. The failure to submit to a criminal history record check delayed the Board from discovering the past criminal convictions alleged below.

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3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Conviction of a Substantially Related Offense)**

5 20. Respondent is subject to discipline under Section 2761 subdivision (f) of the Code for
6 a substantially related misdemeanor conviction for disorderly conduct in 2005 for solicitation of
7 prostitution, the circumstances of which are as follows:

8 21. On or about October 26, 2005, after pleading nolo contendere, Respondent was
9 convicted of one misdemeanor count of violating Penal Code section 647(b)(disorderly conduct
10 by solicitation of prostitution) in the criminal proceeding entitled *People v. Solomon Arguelles*
11 *Palomares*, case number 5HL02813 in Los Angeles County Superior Court.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Registered Nursing issue a decision:

15 1. Revoking or suspending Registered Nurse License Number 437148, issued to
16 Solomon Arguelles Palomares;

17 2. Ordering Solomon Arguelles Palomares to pay the Board of Registered Nursing the
18 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code Section 125.3; and,

20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: June 6, 2012

22 Louise R. Bailey
23 LOUISE R. BAILEY, M.Ed., R.N.
24 Interim Executive Officer
25 Board of Registered Nursing
26 Department of Consumer Affairs
27 State of California
28 Complainant

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